

**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

DEJWAN SIMMS,

Plaintiff,

v.

EDWARDS,

Defendant.

Case No. 1:22-cv-00028-BAM (PC)

ORDER VACATING ORDER TO SUBMIT  
APPLICATION TO PROCEED *IN FORMA*  
*PAUPERIS*  
(ECF No. 4)

ORDER DIRECTING CLERK OF COURT TO  
RANDOMLY ASSIGN DISTRICT JUDGE TO  
ACTION

FINDINGS AND RECOMMENDATION  
THAT PLAINTIFF'S MOTION FOR LEAVE  
TO PROCEED *IN FORMA PAUPERIS* BE  
DENIED  
(ECF No. 5)

**FOURTEEN (14) DAY DEADLINE**

Plaintiff Dejwan Simms ("Plaintiff") is a state prisoner proceeding *pro se* in this civil rights action pursuant to 42 U.S.C. § 1983.

Plaintiff initiated this action on January 6, 2022, (ECF No. 1), but did not include a filing fee or an application to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. On January 10, 2022, the Court issued an order for Plaintiff to submit an application to proceed *in forma pauperis* or to pay the filing fee within forty-five days to proceed with this action. (ECF No. 4.) The same day, Plaintiff filed his application to proceed *in forma pauperis*, together with a prisoner trust account statement. (ECF No. 5.) As Plaintiff's application and the Court's order appear to have

crossed in the mail, and Plaintiff has submitted the required application, the Court finds it appropriate to vacate the January 10, 2022 order.

Examination of Plaintiff's application to proceed *in forma pauperis* and the attached trust account statement reveals that Plaintiff is able to afford the costs of this action. Specifically, Plaintiff's current available balance in his inmate trust account is \$914.77. (ECF No. 5.)

Accordingly, IT IS HEREBY ORDERED as follows:

1. The Court's January 10, 2022 order directing Plaintiff to submit an application to proceed *in forma pauperis*, (ECF No. 4), is VACATED; and
2. The Clerk of the Court is directed to randomly assign a District Judge to this action.

\* \* \*

Further, it is HEREBY RECOMMENDED that:

1. The motion to proceed *in forma pauperis*, (ECF No. 5), be DENIED; and
2. Plaintiff be ORDERED to pay the \$402.00 initial filing fee in full to proceed with this action.

These Findings and Recommendations will be submitted to the United States District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen (14) days** after being served with these Findings and Recommendations, Plaintiff may file written objections with the court. The document should be captioned "Objections to Magistrate Judge's Findings and Recommendation." Plaintiff is advised that the failure to file objections within the specified time may result in the waiver of the "right to challenge the magistrate's factual findings" on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: January 11, 2022

/s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE